# PUBLIC DISCLOSURE

**May 19, 2014**

# COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

**First Electronic Bank**
**Certificate Number: 35533**

**280 West 10200 South, Suite 200**
**Sandy, Utah 84070**

**Federal Deposit Insurance Corporation**
**25 Jessie Street at Ecker Square, Suite 2300**
**San Francisco, California 94105**

**NOTE:** This document is an evaluation of this institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

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## GENERAL INFORMATION

The Community Reinvestment Act (CRA) requires each federal financial supervisory agency to use its authority when examining financial institutions subject to its supervision, to assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income (LMI) neighborhoods, consistent with safe and sound operation of the institution. Upon conclusion of such examination, the agency must prepare a written evaluation of the institution's record of meeting the credit needs of its community.

*This document is an evaluation of the CRA performance of* ***First Electronic Bank (FEB)*** *prepared by the* ***Federal Deposit Insurance Corporation (FDIC)****, the institution's supervisory agency, as of* ***May 19, 2014****. The agency rates the CRA performance of an institution consistent with the provisions set forth in Appendix A to 12 CFR Part 345.*

## INSTITUTION RATING

***INSTITUTION'S CRA RATING*:** This institution is rated "**Substantial Noncompliance**."

FEB's performance factors reflect an overall poor level of performance, as further described below, resulting in an overall CRA Rating of "Needs to Improve"; however, the August 1, 2011, Compliance Examination identified several substantive violations of Section 5 of the Federal Trade Commission (FTC) Act as it relates to unfair or deceptive acts or practices (UDAP) and substantive violations of the Consumer Financial Protection Bureau's Regulation B, which implements the Equal Credit Opportunity Act (ECOA). These violations must be taken into account when assessing a bank's overall CRA performance, as they are inconsistent with meeting community credit needs. Based upon the seriousness of these violations, the institution's CRA Performance Evaluation (PE) Rating has been lowered from "Needs to Improve" to "Substantial Noncompliance."

The following summarizes the factors considered in assessing FEB's CRA performance and assigning a rating.

- A substantial majority of loans and other lending-related activities are outside of the bank's assessment area (AA).
- The net loan-to-deposit (LTD) ratio is less than reasonable given the institution's size, financial condition, and AA credit needs.
- With less than 1 percent of the bank's loans originated in its AA in 2012 and 2013, no meaningful conclusions can be drawn regarding geographic distribution.
- With less than 1 percent of the bank's loans originated in its AA in 2012 and 2013, and because borrower income is not collected or considered when underwriting loans, no meaningful conclusions can be drawn regarding borrower-income.
- No CRA-related complaints were received during the review period.

## SCOPE OF EXAMINATION

Examiners evaluated FEB using the small bank CRA examination procedures. As of January 1, 2014, a small bank is defined as one that had total assets of less than $300 million as of December 31st of either of the prior 2 calendar years. Examiners evaluated FEB's CRA performance in the context of the following:

- Demographic characteristics of the AA
- Lending opportunities within the AA
- The institution's financial resources and constraints
- The institution's product offerings and business strategy
- Information derived from community contacts

This evaluation reflects FEB's CRA performance since the prior evaluation, dated October 9, 2007. The current evaluation was conducted at the institution's headquarters in Sandy, Utah. Examiners relied on records and reports provided by the institution; publicly available loan and financial information; demographic information; and information gathered as part of the evaluation process, including three existing community contacts. A review of the FDIC's records and the bank's CRA public file did not reveal any complaints relating to the bank's CRA performance since the prior evaluation. Examiners reviewed FEB's consumer credit card loans originated during 2012 and 2013 as part of this CRA PE. FEB originated 38,950 loans totaling approximately $123 million in 2012, and 33,968 loans totaling approximately $101 million in 2013. Of the universe of loans, only two were originated within the AA in 2012, and nine were originated within the AA in 2013.

The bank's primary business focus is originating private label consumer credit cards for its parent, Fry's Electronics, Inc. (Fry's). FEB did not originate any residential, small business, or small farm loans during the review period. The loans originated within the AA were used to determine the bank's performance as it relates to the geographic distribution and borrower profile analysis sections of this CRA PE, as applicable. FEB does not collect income information from consumer credit card applicants. Credit underwriting uses a completely automated and largely credit score driven system. All loans were geocoded to specific census tracts (CTs) based on data obtained directly from FEB.

In addition to credit card loans originated, examiners also reviewed and considered any community development (CD) loans or lending-related investments made within the bank's AA during the review period.

## DESCRIPTION OF INSTITUTION

FEB is an industrial bank chartered in the State of Utah in October of 2000. The bank is wholly owned by Fry's, which is headquartered in San Jose, California. Fry's operates 34 consumer electronics retail stores located throughout 9 states: Arizona, California, Georgia, Illinois, Indiana, Nevada, Oregon, Texas, and Washington. Fry's does not operate any stores in the State of Utah where FEB is headquartered. FEB was initially established to provide private label credit cards to Fry's customers, which was launched in 2004. These lines of credit can be used to purchase store merchandise, repair services, and service contracts at Fry's retail stores.

In 2011, FEB expanded its operations to incorporate a strategic partner program. Currently, the bank has two strategic partnerships that offer consumer credit through cards or notes. The larger of the two strategic partners is Dent-a-Med, Inc., d/b/a The HELPcard, which offers specialized private label lines of credit to facilitate the purchase of specialty bedding, home exercise equipment, hearing aids, and dental procedures. The second strategic partnership is with Monterey Financial Services, which provides three services: consumer receivables financing, loan servicing, and delinquent debt collections. The strategic partners maintain responsibility for making credit decisions as well as servicing and managing their own portfolio of credit accounts.

FEB operates from a single office in Sandy, Utah. No branches have been opened or closed since the prior CRA PE. Deposits are comprised of funds from the bank's parent, Fry's, and funds solicited from Fry's customers. A significant majority of the dollar volume of deposit accounts held (90 percent) are centered in certificate of deposit accounts.

As of March 31, 2014, FEB reported total assets of $9.58 million, total deposits of $556 thousand, and total equity capital of $7.61 million. The loan portfolio totaling $1.17 million is centered in credit card loans. As previously stated, FEB was established to provide private label credit cards to Fry's customers. As customers make purchases using their Fry's credit card, the resulting receivables are sold, without recourse, to Fry's daily in adherence with section 23A of the Federal Reserve Act. FEB retains ownership of the underlying accounts and continues to be responsible for servicing accounts (*i.e.*, collecting payments, generating monthly statements, and providing other similar servicing functions). Table 1 details the bank's loan portfolio as of March 31, 2014.

**Table 1 - Loan Portfolio Distribution as of March 31, 2014**

| Loan Type | Dollar Volume (000) | Percentage of Total Loans |
|---|---|---|
| Commercial and Industrial Loans | 4 | 0.34 |
| Consumer Credit Cards | 1,173 | 99.66 |
| Less: Any Unearned Income on Loans | 0 | 0.00 |
| **Total Loans** | **1,177** | **100.00** |

***Source: March 31, 2014 Call Report***

There are no legal or financial impediments that would prevent the bank from reasonably meeting the credit and CD needs of its AA. A review of FDIC records and the institution's CRA public file did not reveal any CRA-related complaints.

At the prior CRA PE, dated October 9, 2007, FEB achieved an overall "Satisfactory" rating.

## DESCRIPTION OF THE SALT LAKE AA

In general, the CRA regulation requires each financial institution to delineate its AA to include the geographies where the bank has its main and branch offices, as well as those surrounding geographies where it concentrates its lending efforts. FEB has delineated one AA that includes all of the CTs within Salt Lake County, Utah. The AA is contiguous and fully contained within the Salt Lake City, Utah, Metropolitan Statistical Area (MSA) #41620. In addition to Salt Lake County, the Salt Lake City MSA includes two additional counties not included within the bank's AA: Tooele County and Summit County. The bank's AA is referred to as the Salt Lake AA for this CRA PE.

The AA complies with all of the technical requirements of the CRA regulation, contains whole geographies, does not reflect illegal discrimination, and does not arbitrarily exclude any LMI areas. The AA contains 212 CTs with a population of 1,029,655, based on 2010 U.S. Census data. Of the 212 CTs, 12 are low-, 41 are moderate-, 97 are middle-, and 60 are upper-income CTs. Two CTs are unclassified. The 2010 U.S. Census data states that the median family income (MFI) for the MSA was $67,016. The Department of Housing and Urban Development (HUD) estimates the 2013 MFI for the MSA to be $71,000.

FEB's AA is home to numerous financial institutions, including several regional banks, credit unions, and many other industrial loan companies. Table 2 reflects the geographic distribution of Salt Lake County's 212 CTs, population, and other selected demographic data as determined by the 2010 U.S. Census. Examiners noted no comparable banks within FEB's AA.

| Table 2 – Demographic Information for Salt Lake County | | | | | | |
|---|---|---|---|---|---|---|
| **Demographic Characteristics** | **#** | **Low % of #** | **Moderate % of #** | **Middle % of #** | **Upper % of #** | **NA % of #** |
| CTs | 212 | 5.19 | 19.34 | 46.23 | 28.30 | 0.94 |
| Population by Geography | 1,029,655 | 4.12 | 18.35 | 50.07 | 27.09 | 0.37 |
| Owner-Occupied Housing Units by CT Income Level | 229,637 | 2.07 | 13.75 | 52.53 | 31.64 | 0.00 |
| Businesses by CT Income Level | 107,481 | 4.71 | 18.66 | 42.99 | 33.17 | 0.47 |
| Families by Income Level | 236,504 | 18.33 | 18.66 | 22.81 | 40.20 | 0.00 |
| Families by CT Income Level | 236,504 | 3.66 | 17.12 | 50.40 | 28.82 | 0.00 |
| MFI<br>HUD*-Adjusted MFI for 2013<br>Households Below Poverty Level | | $67,016<br>$71,000<br>9.77% | Median Housing Value<br>Unemployment Rate | | $252,807<br>4.20% | |
| *Source: 2010 U.S. Census Data; 2013 D&B Data; and 2013 HUD updated MFI *Housing and Urban Development Agency (HUD)* | | | | | | |

## Economic Conditions

Salt Lake County

According to information from Moody's Analytics dated April 2014, the Salt Lake City area has continued to expand in recent months, reflecting big gains in construction and lower-paying consumer-related industries. The labor force is increasing, bringing labor force participation back to pre-recession rates. The unemployment rate is slightly above 4 percent, which is well below the peak of nearly 8 percent in 2010. Housing growth has slowed slightly due to an expansion in construction which has alleviated a tight supply that caused prices to rise quickly.

Strengths of the area include strong population growth and emigration, below-average business costs, a well educated population, and a concentration of high-value added tech industries. Economic weaknesses include high exposure to state and federal finances, a below-average per capita income, and a relatively high cost of living.

The largest employment sectors by percentage of employment in the area include professional and business services at 16.50 percent, government at 15.30 percent, education and health services at 11.20 percent, and retail trade at 10.80 percent. Top employers in the Salt Lake City MSA include Intermountain Health Care, Inc., the University of Utah, World Financial Capital Bank, Comenity Capital Bank, and Smith's Food and Drug.

## Community Contacts

Examiners reviewed three recent community contacts to determine the credit and CD needs of the AA and to gain insight into the economic conditions of the bank's AA. One contact is dedicated to providing solutions for distressed neighborhoods as it relates to housing, one contact is focused on helping homeless families achieve self-sufficiency, and the third contact is focused on providing healthcare services to the underserved and uninsured population.

Two of the three contacts stated that the current economic conditions of the Salt Lake City area are generally better than the national economy. One of the contacts observed that the local economy is in a stalled or limited growth pattern. One contact stated that employment growth varied based on industry, with the government sector showing a reduction in jobs. One contact stated that wages in the area are depressed, causing further progression towards homelessness for some. In terms of housing, one contact stated that home values have been increasing and that affordable housing is becoming more strained. One contact stated that with the number of banks in the area, competition for activities is fierce; however, there continues to be a great need for CD in the area.

## CONCLUSIONS WITH RESPECT TO PERFORMANCE CRITERIA

### AA Concentration

Overall, a substantial majority of loans were originated outside FEB's AA. FEB originated 72,918 loans totaling $223.7 million during 2012 and 2013. Table 3 shows that the bank originated a nominal number of loans inside the AA. This low level of lending in the AA is attributed to the lack of Fry's stores in the State of Utah, which is where the private label Fry's credit cards are marketed and used. Further, FEB has no plans to be a stand-alone entity, and FEB's parent, Fry's, has no plans to establish a Fry's store in the State of Utah. This criterion was given the most weight in this evaluation as the number of loans within the bank's AA was too insignificant for examiners to produce any meaningful analysis of lending within the AA for geographic distribution and borrower profile analyses.

**Table 3 – Distribution of Loans Inside and Outside the AA**

| Loan Type | Number of Loans | | | | | Dollar Amount of Loans | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Inside AA | | Outside AA | | Total | Inside AA | | Outside AA | | Total |
| | # | % | # | % | | $ (000) | % | $ (000) | % | |
| **Consumer** | | | | | | | | | | |
| 2012 | 2 | 0.01 | 38,948 | 99.99 | 38,950 | 5 | 0.00 | 123,043 | 100.00 | 123,048 |
| 2013 | 9 | 0.03 | 33,959 | 99.97 | 33,968 | 25 | 0.02 | 100,688 | 99.98 | 100,713 |
| **Total** | **11** | **0.02** | **72,907** | **99.98** | **72,918** | **30** | **0.01** | **223,731** | **99.99** | **223,761** |

*Source: Bank Records*

Examiners also considered any CD loans within FEB's AA originated during the review period. FEB participates in the Utah Microenterprise Loan Fund, which provides small business financing designed to assist people who cannot qualify for traditional small business credit. FEB's original loan commitment was $20,833, with a current balance (as of April 1, 2014) of $3,724.50 representing 0.50 percent of the loan pool. FEB has no other CD loans or lending-related community development activities. FEB's AA lending concentration performance does not meet the standards for satisfactory performance, which is primarily based on the bank's lack of other lending-related activities to help supplement the extremely low volume of lending within the AA.

**LTD Ratio**

The average net LTD ratio over the last 26 quarters since the bank's previous CRA PE dated October 9, 2007, is 35 percent. The bank's net LTD ratio has fluctuated from a low of 0.05 percent (March 31, 2010) to a high of 211.69 percent (March 31, 2014). Deposits significantly declined starting with the June 30, 2010, Call Report date. In addition, the dollar amount of net loans increased substantially as of the September 30, 2011, Call Report date. These changes caused a significant change in the bank's net LTD ratio from averaging less than 1 percent over the first 15 quarters since the last CRA Evaluation, to an average of 82.4 percent over the most recent 11 quarters. Although this reflects a positive trend, examiners noted that the bank's LTD ratio does not reflect the ratio of loans to consumer-based deposits, as the bank does not offer deposit products to the general public, nor does it have a retail branch network in which to obtain deposits within the AA. Furthermore, the LTD ratio does not provide a complete assessment of the bank's loan operations, as loans are sold to Fry's or one of its strategic partners after origination. As a result, examiners were unable to establish meaningful conclusions relative to the adequacy of the bank's LTD ratio.

**Geographic distribution**

Examiners were unable to appropriately analyze the bank's lending within the AA due to the very low volume of lending within the AA (a total of 11 loans, or 0.04 percent of total loans, in 2012 and 2013).

**Borrower Profile**

FEB's overall distribution of loans to borrowers inside the AA had no effect on its performance under this criterion. FEB does not collect or consider borrower income in its decision making process. Further, only a nominal number of loans were originated inside the bank's AA.

**Response to CRA-Related Complaints**

FEB has not received any CRA-related comments or complaints since the prior CRA PE; therefore, this performance criterion was not evaluated.

## LENDING OR OTHER ILLEGAL CREDIT PRACTICES REVIEW

The CRA requires that examiners consider an institution's compliance with laws and regulations prohibiting discrimination and other illegal credit practices when evaluating CRA performance and assigning a rating. An FDIC Compliance Examination completed during the review period identified several violations of Section 5 of the Federal Trade Commission (FTC) Act and substantive violations of Regulation B. The bank's policies, procedures, training, monitoring, and audit procedures were not sufficient to prevent the illegal credit practices from occurring. Management has committed to address the weaknesses and prevent their recurrence.

Examiners lowered the overall CRA Rating from “Needs to Improve” to “Substantial Noncompliance” due to the nature and extent of the violations cited. The identification of the violations is inconsistent with helping to meet community credit needs. Section 345.28(c) of the FDIC’s Rules and Regulations discusses the effect of illegal credit practices on an assigned CRA Rating.

## GLOSSARY

**Aggregate lending:** The number of loans originated and purchased by all reporting lenders in specified income categories as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the metropolitan area/assessment area.

**Census tract:** A small subdivision of metropolitan and other densely populated counties. Census tract boundaries do not cross county lines; however, they may cross the boundaries of metropolitan statistical areas. Census tracts usually have between 2,500 and 8,000 persons, and their physical size varies widely depending upon population density. Census tracts are designed to be homogeneous with respect to population characteristics, economic status, and living conditions to allow for statistical comparisons.

**Community development:** All Agencies have adopted the following language. Affordable housing (including multifamily rental housing) for low- or moderate-income individuals; community services targeted to low- or moderate-income individuals; activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or, activities that revitalize or stabilize low- or moderate-income geographies.

Effective September 1, 2005, the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have adopted the following additional language as part of the revitalize or stabilize definition of community development. Activities that revitalize or stabilize —

(i) Low-or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, based on-

   a. Rates of poverty, unemployment, and population loss; or
   b. Population size, density, and dispersion. Activities that revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

**Consumer loan(s):** A loan(s) to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. This definition includes the following categories: motor vehicle loans, credit card loans, home equity loans, other secured consumer loans, and other unsecured consumer loans.

**Family:** Includes a householder and one or more other persons living in the same household who are related to the householder by birth, marriage, or adoption. The number of family households always equals the number of families; however, a family household may also include non-relatives living with the family. Families are classified by type as either a married-couple family or other family, which is further classified into 'male householder' (a family with a male householder and no wife present) or 'female householder' (a family with a female householder and no husband present).

**Full-scope review:** Performance under the Lending, Investment, and Service Tests is analyzed considering performance context, quantitative factors (for example, geographic distribution, borrower distribution, and total number and dollar amount of investments), and qualitative factors (for example, innovativeness, complexity, and responsiveness).

**Geography:** A census tract delineated by the United States Bureau of the Census in the most recent decennial census.

**Home Mortgage Disclosure Act (HMDA):** The statute that requires certain mortgage lenders that do business or have banking offices in a metropolitan statistical area to file annual summary reports of their mortgage lending activity. The reports include such data as the race, gender, and the income of applications, the amount of loan requested, and the disposition of the application (for example, approved, denied, and withdrawn).

**Home mortgage loans:** Includes home purchase and home improvement loans as defined in the HMDA regulation. This definition also includes multifamily (five or more families) dwelling loans, loans for the purchase of manufactured homes and refinancings of home improvement and home purchase loans.

**Household:** Includes all persons occupying a housing unit. Persons not living in households are classified as living in group quarters. In 100 percent tabulations, the count of households always equals the count of occupied housing units.

**Limited-scope review:** Performance under the Lending, Investment, and Service Tests is analyzed using only quantitative factors (for example, geographic distribution, borrower distribution, total number and dollar amount of investments, and branch distribution).

**Low-income:** Individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

**Market share:** The number of loans originated and purchased by the institution as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the metropolitan area/assessment area.

**Metropolitan area (MA):** A metropolitan statistical area (MSA) or a metropolitan division (MD) as defined by the Office of Management and Budget. A MSA is a core area containing at least one urbanized area of 50,000 or more inhabitants, together with adjacent communities having a high degree of economic and social integration with that core. A MD is a division of a

MSA based on specific criteria including commuting patterns. Only a MSA that has a population of at least 2.5 million may be divided into MDs.

**Middle-income:** Individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 percent and less than 120 percent, in the case of a geography.

**Moderate-income:** Individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 percent and less than 80 percent, in the case of a geography.

**Multifamily:** Refers to a residential structure that contains five or more units**.**

**Other products:** Includes any unreported optional category of loans for which the institution collects and maintains data for consideration during a CRA examination. Examples of such activity include consumer loans and other loan data an institution may provide concerning its lending performance.

**Owner-occupied units:** Includes units occupied by the owner or co-owner, even if the unit has not been fully paid for or is mortgaged.

**Qualified investment:** A qualified investment is defined as any lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

**Rated area:** A rated area is a state or multistate metropolitan area. For an institution with domestic branches in only one state, the institution's CRA rating would be the state rating. If an institution maintains domestic branches in more than one state, the institution will receive a rating for each state in which those branches are located. If an institution maintains domestic branches in two or more states within a multistate metropolitan area, the institution will receive a rating for the multistate metropolitan area.

**Small loan(s) to business(es):** A loan included in 'loans to small businesses' as defined in the Consolidated Report of Condition and Income (Call Report) and the Thrift Financial Reporting (TFR) instructions. These loans have original amounts of $1 million or less and typically are either secured by nonfarm or nonresidential real estate or are classified as commercial and industrial loans. However, thrift institutions may also exercise the option to report loans secured by nonfarm residential real estate as "small business loans" if the loans are reported on the TFR as nonmortgage, commercial loans.

**Small loan(s) to farm(s):** A loan included in 'loans to small farms' as defined in the instructions for preparation of the Consolidated Report of Condition and Income (Call Report). These loans have original amounts of $500,000 or less and are either secured by farmland, or are classified as loans to finance agricultural production and other loans to farmers.

**Upper-income:** Individual income that is more than 120 percent of the area median income, or a median family income that is more than 120 percent, in the case of a geography.